IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	Criminal No. 3:08-CR-119-D(02)
VS.	§	
	§	
TERESA CASTILLO,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION
AND ORDER

Defendant Teresa Castillo ("Castillo") moves the court to compel the United States of America (the "government") to disclose confidential informants, for a bill of particulars, and to suppress the fruits of a search. Castillo filed the motions on March 19, 2009, well after the court-ordered motion deadline and 11 days before the commencement of trial. The court therefore denies two motions as untimely and, in its discretion, reaches the motion to suppress and denies it on the merits.

I

Castillo is charged by indictment with one count of conspiracy to possess with intent to distribute and distribute more than five kilograms of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. § 846.[1] In the court's May 16, 2008 criminal trial scheduling order, it set the pretrial motion deadline for June 16,

[1]The indictment also contains a criminal forfeiture allegation.

2008. In a July 28, 2008 trial continuance order, the court continued the pretrial motion deadline to August 18, 2008. Castillo filed the instant motions on March 19, 2009——more than seven months after the pretrial motion deadline and within two weeks of the commencement of trial.[2] The court denies the motions to disclose confidential informants and for a bill of particulars as untimely.

II

Castillo also moves to suppress the fruits of a search conducted at 879 Liska Road, Ennis, Texas, on March 23, 2006. She maintains that the search warrant was signed but undated by the issuing magistrate judge. The court in its discretion will decide this motion, despite its untimeliness.

Under Tex. Code Crim. Proc. Ann. Art. 18.04 (Vernon 2005), a sufficient search warrant must, *inter alia*, be "dated and signed by the magistrate." Because the search warrant did not satisfy this

[2]In response to the parties' unopposed motions for continuance, the court reset the trial date two more times after its July 28, 2008 continuance order, first to January 20, 2009 and then to March 30, 2009. In both orders, after resetting the trial date, the court stated that "[p]retrial *filings* based on the current trial setting are now due based on the new trial setting." Sept. 29, 2008 Order (emphasis added); Jan. 12, 2009 Order (emphasis added). The term "pretrial filings," however, refers to such matters as witness lists, exhibit lists, and the like that must be filed before trial, not to pretrial motions. Under the briefing regimen provided by the court's local criminal rules, it would not be possible to allow a party to file pretrial motions so close to trial because, even assuming the response was due before trial, there would be little or no time to decide the motion and allow time for compliance before the start of trial.

requirement,[3] Castillo maintains that the warrant is invalid and the items seized by the Ellis County Sheriff's Department must be suppressed.

Castillo's argument is flawed in two respects: First, "[t]he exclusionary rule was created to discourage violations of the Fourth Amendment, not violations of state law." *United States v. Walker*, 960 F.2d 409, 415 (5th Cir. 1992) (citing cases). Hence, the proper inquiry in determining whether to exclude evidence is not whether state officials' actions were valid under state law, but rather whether their actions violated the Fourth Amendment. *Id.* Castillo has failed to establish that this defect violated the Fourth Amendment.

Second, even if the court assumes that the undated search warrant was constitutionally defective (as opposed to being merely insufficient under Texas law), the "Fourth Amendment's exclusionary rule does not bar the admission of evidence obtained with a warrant later found to be invalid so long as the executing officers acted in reasonable reliance on the warrant." *United States v. Kelley*, 140 F.3d 596, 602 (5th Cir. 1998) (citing *United States v. Leon*, 468 U.S. 897, 906-08 (1984)).

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[3]The government contends that the search warrant was both signed and dated by the magistrate. Because suppression is not warranted even if the search warrant was undated, the court will assume *arguendo* that the warrant was undated.

> Generally, issuance of a warrant by a magistrate suffices to establish good faith on the part of law enforcement officers who conduct a search pursuant to the warrant. However, the [Supreme] Court in *Leon* made clear that an officer's reliance on the technical sufficiency of the warrant not only must be made in good faith, but also must be objectively reasonable. The *Leon* Court noted that in some circumstances the officer will have no reasonable grounds for believing that a warrant is valid——e.g., when the warrant is facially deficient in particularizing the place to be searched or the things to be seized.

Id. at 604 (internal quotation marks and citations omitted). Therefore, even if the court assumes that an undated warrant is invalid under the Fourth Amendment, suppression would only be required if the undated warrant was so facially deficient that the officers could not have relied on it in an objectively reasonable way.

In *United States v. Kelley*, 140 F.3d 596 (5th Cir. 1998), the Fifth Circuit considered whether an undated *and unsigned* warrant was so facially deficient that the officers could not have relied on it in an objectively reasonable way. Although the warrant in *Kelley* was "technically insufficient, *i.e.,* one without a signature or a date," it was undisputed that probable cause existed. *Id.* at 602 n.5. Under these circumstances, the Fifth Circuit found "that the meaning behind the function of dating and signing the warrant was not lost." *Id.* at 603. "Because the objective criteria for the search warrant——probable cause——existed and the warrant was

flawed only due to the inadvertence of the magistrate, [the Fifth Circuit held] that the good-faith exception to the exclusionary rule applie[d]." *Id.* The Fifth Circuit in *Kelley* also rejected the argument for a *per se* rule that an unsigned and undated warrant can never suffice, and that any evidence seized under such a warrant must be suppressed:

> First, penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations. The rare occasion when a magistrate accidentally fails to sign a warrant cannot be eliminated by suppressing the evidence in that situation. Second, it is unlikely that police will willfully and recklessly attempt to evade getting a warrant signed. Third, suppressing the evidence seized in the case will add nothing to protect against an affiant who misrepresents the facts to the magistrate, nor will it encourage officers to take their chances in submitting deliberately or recklessly false information.

Id. (quoting *United States v. Richardson*, 943 F.2d 547, 550 (5th Cir. 1991) (internal quotation marks, brackets, and citations omitted).

Because here, as in *Kelley*, the search warrant's only flaw (the failure to fill in the day of March 2006 on which the magistrate signed the warrant) was due to the inadvertence of the magistrate, Castillo does not dispute that probable cause existed, and suppression in these circumstances would not serve a deterrent purpose, the court holds that the warrant was not so facially deficient that the officers could not have relied on it in an

objectively reasonable way.

Accordingly, the good-faith exception to the exclusionary rule applies, and Castillo's motion to suppress must be denied.

* * *

For the reasons stated, Castillo's March 19, 2009 motion to disclose confidential informants, motion for a bill of particulars, and motion to suppress are denied.

SO ORDERED.

March 23, 2009.

SIDNEY A. FITZWATER
CHIEF JUDGE